

March 29 2019 1:58 PM

KEVIN STOCK
COUNTY CLERK
NO: 19-2-06652-6

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SUMNER PLAINS 84, LLC, a Washington
Limited Liability Company,

Plaintiff,

vs.

FIREMAN'S FUND INSURANCE
COMPANY, a California Corporation,

Defendant.

NO: 19-2-06652-6

FIRST AMENDED COMPLAINT FOR:

[1] BREACH OF CONTRACT;
[2] BAD FAITH;
[3] VIOLATION OF CONSUMER
PROTECTION ACT; and
[4] VIOLATION OF INSURANCE FAIR
CONDUCT ACT

Comes now the Plaintiff, and for causes of action against the Defendant, alleges and
avers as follows.

I. Parties

1.1 SUMNER PLAINS 84, LLC, is a Limited Liability Company, organized and
existing under the laws of the State of Washington, with its principal place of business in Pierce
County, Washington.

1.2 FIREMAN'S FUND INSURANCE COMPANY, (FFIC) is a Corporation,
organized and existing the laws of the State of California, with its principal place of business in

FIRST AMENDED COMPLAINT - 1

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1 Novato, California.

2 1.3 Although FFIC is organized in the State of California, it does business in Pierce
3 County, Washington, making venue proper there.

4 **II. Facts**

5 2.1 Plaintiff is the owner of an industrial park located at 14329 32nd Street East,
6 Sumner, Washington 98390, (“The “Property”).

7 2.2 FFIC issued an insurance policy to Plaintiff, effective March 11, 2015, Policy
8 No. AZC8093643, (“The Policy”). Plaintiff renewed The Policy annually for each of the two
9 following years, resulting in a coverage period between March 11, 2015 through and including
10 March 11, 2018.

11 2.3 Plaintiff leased The Property to Specialized Pavement Marking, Inc., (SPM), a
12 highway striping company. SPM vacated The Property on December 15, 2017.

13 2.4 At the time SPM vacated The Property, Plaintiff discovered a number of
14 conditions on The Property that are subject to property damage coverage under the terms of The
15 Policy.

16 2.5 Plaintiff discovered that several discrete locations on The Property were
17 contaminated with petroleum and paint pollutants discharged from SPM’s vehicles, in amounts
18 in excess of State and Federal environmental laws and regulations.

19 2.6 As a consequence of this contamination, Plaintiff embarked on a costly and time-
20 consuming process to discover, test, assess and remediate the contamination. Plaintiff incurred
21 substantial remediation expenses during this period. Additionally, during this period, the
22 premises were untenable, resulting in approximately eleven months lost rent.
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1 2.7 In order to decontaminate the property, Plaintiff also incurred substantial
2 expenses to clean and resurface the concrete floor, which had been contaminated with
3 petroleum products discharged from SPM's vehicles.

4 2.8. In addition to the foregoing, Plaintiff discovered that a fence had been
5 vandalized, and gates had been removed from The Property.

6 2.9 In December of 2017, Plaintiff made a claim on the above policy for the above
7 losses.

8 2.10 At the time of this claim, and at all times relevant hereto, Plaintiff has paid all
9 premiums and has otherwise complied with all obligations to FFIC under such policy.

10 2.11 In response to this claim, FFIC conducted a hasty and inadequate investigation
11 into the loss, and then denied any coverage whatsoever by letter dated March 8, 2018. This
12 denial was made in bad faith, and on the untenable grounds that the Plaintiff's damages were
13 due to "wear and tear." However, none of the items of loss for which Plaintiff submitted a
14 claim were due to wear and tear.

15 2.12 After receiving the above denial, Plaintiff made a further protest to FFIC to
16 conduct an investigation. As a result, Defendant sent a different adjuster to the property, Young
17 & Associates, who produced a more detailed report. According to its report, dated May 3,
18 2018, Plaintiff's estimated damage was in excess of \$170,000.

19 2.13 After receiving the report, FFIC substantially ignored the second adjuster's
20 report, and for a second time denied any coverage whatsoever by letter dated June 21, 2018.

21 2.14 For a second time, FFIC justified its refusal to pay benefits under the specious
22 claim that the Plaintiff's losses were due to "wear and tear." FFIC even rejected claims relating
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1 to environmental pollution on the property, fences with enormous holes cut in it, and gates that
2 were vandalized and missing as “wear and tear.”

3 2.15 On or about August 17, 2018, pursuant to RCW 48.30.015(8)(a), Plaintiff
4 provided FFIC a formal notice, through the Insurance Commissioner’s Office, of its intent to
5 pursue this claim.

6 2.16 In response to this letter, on September 4, 2018, FFIC’s attorneys sent a letter,
7 raising a multitude of defenses to the payment of Plaintiff’s claims that were not previously
8 raised by them in their denials dated March 8, 2018 and May 3, 2018. The defenses to coverage
9 raised by FFIC are without legal merit, and it is estopped from raising such defenses.
10

11 2.17 One of the defenses raised by FFIC was that the damages took place before the
12 policies were inceptioned or after they expired. Neither FFIC, nor its attorneys, conducted any
13 investigation into the timing of Plaintiff’s losses, and the assertion of this defense was made in
14 bad faith for the purpose of denying Plaintiff’s claims. All the damages occurred within the
15 period of insurance coverage, between March 11, 2015 and March 11, 2018.
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17 2.18 A further defense raised by FFIC is that the policy excluded coverage for
18 “Maintenance Types of Loss,” which FFIC more specifically defined to include “wear and
19 tear,” and “settling, cracking, shrinking or expansion.” However, none of the damages being
20 sought constitute “wear and tear,” nor is Plaintiff seeking damages arising from any settling of
21 the floor.

22 2.19 A further defense raised by FFIC is that the Plaintiff’s claims are a product of
23 “Acts or decisions,” or “Negligent work” Exclusion, appearing in the Policy under ¶B(3)(b), Pg.
24 16. This exclusion was asserted in bad faith. The Insurance policy expressly states that there is
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1 no such exclusion for “Acts and decisions,” or for “negligent work,” when the loss constitutes
 2 “Covered Cause of Loss.” The term “Covered Cause of Loss,” is defined in the policy at
 3 ¶1(A)(3), Pg. 3, as any other risk of direct physical loss, except where elsewhere excluded or
 4 limited in the policy. And while at ¶B(5)(b) located at Pg. 4 of the policy makes certain
 5 exceptions related to pollution, this exception expressly does not cover claims that otherwise
 6 qualified as a “Specified Cause of Loss.” See ¶B(2)(q). “Specified Cause of Loss, defined Pg.
 7 36 of the policy to include losses occasioned by “vehicles,” and also “vandalism.” The loss to
 8 the fence and gate were the product of vandalism, and the pollutants were the product of
 9 discharge from SPM’s vehicles.
 10

11 2.20 A further defense raised by FFIC relates to a limitation of \$10,000 for expenses
 12 incurred to extract pollutants. However, this limit is applied for each separate location.
 13 Moreover, this limitation does not apply to the Business Income Losses set forth in ¶A(5)(g)
 14 comprising approximately eleven months of lost rent during the period of remediation.
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16 2.21 A further defense raised by FFIC relates to a provision of the Insurance
 17 agreement requiring an alleged “written report of cleanup,” within 180 days of when the spills
 18 occurred. However, Plaintiff did report its losses within 180 days. Moreover, this provision is
 19 not enforceable as a matter of law, in the absence of any prejudice on the part of the Defendant,
 20 and Defendant has not suffered any prejudice.

21 2.22 A further defense raised by FFIC relates to a two-year suit-limitation bar to
 22 Plaintiff’s claims. However, the losses being asserted in this action occurred within two years
 23 of the commencement of this action. Ultimately, neither FFIC, nor its attorneys, conducted any
 24 investigation into the timing of Plaintiff’s losses, and this defense has been asserted in bad faith.
 25

1 hereinabove.

2 4.2 FFIC breached its duty of good faith to the Plaintiff, by failing to conduct a fair
3 investigation of Plaintiff's claims, and for its bad faith denial of the payment of benefits to
4 Plaintiff on untenable grounds, resulting in substantial harm to Plaintiff.

5 4.3 Wherefore FFIC is liable to Plaintiff for bad faith denial of benefits, in an
6 amount to be proven at trial.

7
8 **V. Violation of the Consumer Protection Act**

9 5.1 Plaintiff re-alleges the allegations contained in Paragraphs 1.1 through 4.3
10 hereinabove.

11 5.2 FFIC has engaged in an unreasonable denial of the payment of benefits, engaged
12 in an unreasonable investigation of Plaintiffs claims, and has engaged in bad faith, and has
13 thereby engaged in unfair or deceptive acts or practices in commerce, causing Plaintiff
14 substantial damages.

15 5.3 Wherefore, FFIC is liable to Plaintiff for an award of damages, treble damages of
16 up to \$25,000 per violation, and for Plaintiff's costs and attorney's fee under Washington's
17 Consumer Protection Act, RCW 19.86.090.

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19 **VI. Violation of the Washington Insurance Fair Conduct Act**

20 6.1 Plaintiff re-alleges the allegations contained in Paragraphs 1.1 through 5.3
21 hereinabove.

22 6.2 Plaintiff is a first party claimant, who has been unlawfully and unreasonably
23 denied benefits by FFIC under a policy of insurance, contrary RCW 48.30.015, and has been
24 damaged thereby.
25

1 6.3 Wherefore, FFIC is liable to Plaintiff for its damages, treble damages, and for
2 Plaintiff's actual and statutory litigation costs, expert witness fees, and attorney's fees pursuant
3 to RW 48.30.015.

4 Wherefore, having alleged causes of action, Plaintiff prays for judgment against FFIC
5 for the following relief:
6

- 7 A. For an award of damages in an amount to be proven at trial;
- 8 B. For treble damages of up to \$25,000, per violation, under the Consumer
9 Protection Act;
- 10 C. For treble damages under the Insurance Fair Conduct Act;
- 11 D. For pre-judgment interest;
- 12 E. For an award of Plaintiff's costs, including both actual and statutory litigation
13 costs and expert witness fees;
- 14 F. For an award of Plaintiff's attorney's fees; and
- 15 G. For such other and further relief as the court deems equitable in the premises.
- 16

17 DATED: March 29, 2019

18 **LAW OFFICE OF BRADLEY S. WOLF**

19 By: /s/: ***Bradley S. Wolf***

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